

Legal Aspects of Indemnification Clauses in Business Transactions in The Digital Age

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ABSTRACT

The rapid development of digital technologies has transformed traditional business transactions into online platforms, introducing new challenges for legal certainty and consumer protection. In digital agreements, exoneration clauses often limit or eliminate the liability of business actors, raising concerns about fairness and legal enforceability. This study aims to examine the application and legal implications of exoneration clauses in digital business transactions in Indonesia, assessing their compliance with statutory provisions and their impact on consumers. The research employs a normative legal research approach, analyzing primary, secondary, and tertiary legal materials, including the Civil Code, Law Number 11 of 2008 concerning Electronic Information and Transactions, and Law Number 8 of 1999 concerning Consumer Protection. Data collection was conducted through library research, while descriptive qualitative analysis was used to synthesize legal norms, doctrines, and expert opinions. Validity and reliability were ensured through triangulation of sources and systematic interpretation. The findings indicate that while exoneration clauses are permissible under the principle of freedom of contract, they cannot be applied arbitrarily. Clauses that disproportionately shift responsibility onto consumers violate the principles of good faith, fairness, and statutory consumer protection. Digital agreements must therefore balance contractual freedom with the protection of weaker parties. The study concludes that legal certainty in digital transactions depends not only on electronic signature recognition, but also on compliance with applicable laws, transparency, and adequate oversight to safeguard consumer rights.

INTRODUCTION

The development of information and communication technology has brought about significant changes in the methods and patterns of business transactions. Economic activities that were once conducted conventionally have now shifted to the digital world, utilizing the internet and electronic systems. This shift has also given rise to various new business models, such as e-commerce, fintech, and other digital platform-based services that prioritize speed, convenience, and efficiency in every transaction.

With the development of digital business models, there is a need for fast and legally binding methods for validating and proving agreements (Barkatullah, 2019). In online transactions where parties do not meet in person, signatures are still required as a form of agreement and valid proof of an agreement. Therefore, the use of digital signatures has emerged

as a solution to the limitations of traditional signatures, ensuring business processes continue to run smoothly and maintain legality, certainty, and security in transactions in the digital era.

A digital signature is essentially a form of signature in the form of electronic information attached to or linked to other electronic information, and used for verification and authentication. Functionally, a digital signature is more or less the same as a regular handwritten signature on paper (Lapian, 2024). In Indonesia, the use of digital signatures is growing along with technological advances, and is also supported by Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE), which regulates the evidentiary power of documents, information, and electronic signatures, specifically in Articles 5 to 12. Furthermore, there is also Government Regulation Number 82 of 2012 which further strengthens regulations regarding electronic systems and transactions (BAPENDA Jabar, 2017).

Digital agreements are typically made without a face-to-face meeting between the parties, as the entire process is conducted electronically. In practice, such agreements are often drawn up in the form of standard contracts, the contents of which are determined unilaterally by the business owner. The means of expressing agreement are usually simple, for example, through a click-wrap agreement, where the user simply clicks an "agree" button, or a browse-wrap agreement, which assumes the user agrees simply by using the service or website (Martinelli et al., 2024).

This situation has given rise to much debate and legal questions, particularly regarding the extent to which digital agreements are legally binding. This relates to whether or not the requirements for a valid agreement, as stipulated in Article 1320 of the Civil Code, are met, such as mutual agreement, capacity, a specific object, and a lawful cause. However, because the agreement mechanism is electronic and the parties' positions are often unequal, doubts arise as to whether such agreement and free will are truly fulfilled in these digital agreements.

On the other hand, although Law No. 11 of 2008 concerning Electronic Information and Transactions, which has been amended several times, most recently as Law No. 1 of 2024, legally recognizes electronic documents and signatures as valid evidence, in practice, many obstacles remain. Legal uncertainty often arises, particularly when proving the authenticity and validity of digital agreements in the event of a dispute. Furthermore, the content of clauses in agreements is often unclear and non-transparent, which can be detrimental to one of the parties, especially consumers (Bresci, 2023; Wiewiórowska-Domagalska, 2024).

Furthermore, consumers are often in a weaker position than businesses in digital agreements, as most agreements are drawn up in standard contracts whose terms are unilaterally determined, leaving consumers with limited negotiation options (Zamani et al., 2025). Digital agreements often contain exoneration clauses that limit or even eliminate the responsibilities of businesses, ultimately harming consumers. This situation actually contradicts the principles of consumer protection as stipulated in Law Number 8 of 1999, which emphasizes a balance of rights and obligations and protection for the weaker party.

Nurfadillah's 2025 research essentially stated that digital contracts require several essential elements, such as a valid electronic agreement, a clear privacy protection clause, and a determination of the applicable law, especially for cross-border transactions (Nurfadillah, 2025). If contracts are made more flexible and adaptable to circumstances, the likelihood of disputes can be reduced and legal certainty in online transactions can be more assured.

Meanwhile, research by Satria et al. in 2025 also explained that digital agreements in Indonesia are actually considered valid, as long as they meet the requirements for a valid agreement and use a recognized electronic signature. The ITE Law also supports this. However, in reality, many obstacles remain, such as the vulnerability of personal data security, the possibility of fraud, and a lack of understanding among business actors about how to conduct digital transactions in accordance with applicable laws (Satria et al., 2025).

Slamet and Pailing's 2019 research explains that Law Number 11 of 2008 concerning the Electronic Information and Transactions (ITE) clearly recognizes that electronic signatures have legal force and consequences, as long as they meet the minimum requirements set out in Article 11 (Slamet & Paliling, 2019). The security of electronic signatures can also be further assured if they are accompanied by an electronic certificate containing the user's identity. This certificate is typically obtained by submitting an application to an electronic certification body or Certification Authority (CA).

The novelty of this research lies in its approach, which combines two perspectives: legal certainty and consumer protection, resulting in a more comprehensive analysis. The results are also expected to serve as a practical guide for businesses in creating legal, transparent, and fair digital agreements. Businesses should pay more attention to the content of clauses, use language that is easy to understand, and avoid standard clauses that could harm consumers. Given the current situation, a more in-depth legal study is needed to determine the legal force of digital agreements in modern business transactions and whether existing regulations are sufficient to provide legal certainty and protection for consumers. This study aims to analyze the legal force of digital agreements in modern business transactions based on applicable laws and regulations in Indonesia.

As digital business models expand, issues regarding the validation and binding nature of online agreements have become increasingly critical. Electronic signatures and click-wrap or browse-wrap agreements have emerged as practical solutions to enable legally recognized consent without physical presence. Lopian et al. (2024) highlight that, while electronic signatures can serve functions equivalent to traditional handwritten signatures, questions remain about their sufficiency in ensuring voluntary consent, clarity, and fairness, particularly for consumers who often occupy weaker positions in such agreements. This introduces a specific legal concern about the balance of rights and obligations in digital contracts.

Prior studies have explored the validity of digital contracts, with Satria et al. (2025) affirming their legal recognition under Indonesian law, provided electronic signatures are used and contractual elements are satisfied. However, these studies largely focus on formal validity and overlook the substantive fairness and consumer protection implications of unilateral exoneration clauses. This gap underscores the need for research that simultaneously addresses both legal enforceability and equitable treatment of digital transaction participants.

The urgency of the study stems from the widespread use of standard digital agreements that incorporate exoneration clauses, which can disproportionately limit business liability and jeopardize consumer rights. With increasing cross-border digital commerce and the rising frequency of disputes related to online transactions, clarifying the legal enforceability and limitations of exoneration clauses becomes essential. As Pitaloka & Sudharma (2025) argue, ensuring both legal certainty and consumer protection is vital to sustaining trust and stability in digital marketplaces.

This research contributes novel insights by integrating two perspectives: legal certainty and consumer protection. While previous studies have examined these areas independently, this study provides a comprehensive analysis of how exoneration clauses function within digital agreements and their implications for equitable treatment. By focusing on Indonesian law, including the Civil Code, ITE Law, and Consumer Protection Law, the study highlights the regulatory interplay that governs digital transactions, revealing both strengths and vulnerabilities in existing frameworks.

The purpose of this research is to investigate the legal force of exoneration clauses in digital agreements, evaluating whether their use aligns with statutory requirements and principles of fairness, good faith, and consumer protection. The study addresses the gap between formal legal recognition of electronic contracts and the substantive risks posed to consumers by clauses that shift liability excessively onto them. By doing so, it provides actionable guidance for businesses, regulators, and legal practitioners seeking to balance contractual freedom with protective obligations.

The research objectives are threefold: first, to examine the extent to which exoneration clauses in digital contracts comply with legal requirements for valid agreements; second, to assess the impact of these clauses on consumer rights and legal certainty; and third, to propose recommendations for drafting fair, transparent, and legally enforceable digital agreements. This framework ensures a systematic evaluation that bridges doctrinal analysis with practical application, enhancing both legal scholarship and industry practice.

From a methodological standpoint, the study employs normative legal research, utilizing primary, secondary, and tertiary legal materials to analyze existing regulations, judicial interpretations, and scholarly opinions. Descriptive qualitative analysis is used to synthesize these sources, providing a structured understanding of how exoneration clauses are applied, monitored, and regulated in digital transactions. This approach allows for an in-depth examination of legal principles while contextualizing their application in contemporary digital commerce. Ultimately, this research benefits multiple stakeholders. Consumers gain greater awareness of their rights and protections within digital contracts, while businesses are guided toward creating agreements that are legally sound and socially responsible. Regulators and policymakers can leverage the findings to refine oversight mechanisms and develop clearer standards for digital contract drafting. By addressing both the legal and ethical dimensions of exoneration clauses, the study aims to foster balanced, transparent, and trustworthy digital business practices in Indonesia and beyond.

METHOD

This study employs a normative legal research design, which aims to examine and analyze existing legal norms, principles, doctrines, and regulations relevant to digital agreements and exoneration clauses in business transactions. Normative legal research is particularly suitable for addressing legal questions regarding compliance, enforceability, and consumer protection in digital contracts. The population of this research comprises all relevant legal materials pertaining to digital agreements in Indonesia, including statutes such as the Civil Code, Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE), Law Number 8 of 1999 concerning Consumer Protection, and supporting government regulations. The sample is drawn purposively, selecting primary, secondary, and tertiary legal

sources that specifically address the formulation, validity, and application of exoneration clauses in digital business contexts.

The data collection techniques involve comprehensive library research, including the review of statutory provisions, government regulations, judicial decisions, academic publications, and previous scholarly studies. The research instruments consist of structured review guides and analytical matrices to systematically extract, categorize, and interpret legal norms and doctrines from the collected materials. Validity and reliability are ensured through cross-verification of legal sources, triangulation of statutes with scholarly commentary, and consistency checks between Indonesian law provisions and international best practices in digital contract governance. The procedure involves identification of relevant legal materials, coding of key concepts and clauses, and systematic comparison of provisions against principles of legality, fairness, good faith, and consumer protection.

The data analysis technique applied is descriptive qualitative analysis, in which legal materials are grouped, interpreted, and synthesized to generate a coherent understanding of the legal framework governing exoneration clauses in digital transactions. Analytical steps include thematic categorization of clauses, evaluation of compliance with Articles 1320 of the Civil Code, Articles 5–12 of the ITE Law, and Article 18 of the Consumer Protection Law, and assessment of the implications for legal certainty and consumer protection. Software tools such as Microsoft Excel and NVivo may be employed to organize, code, and visualize extracted data to ensure systematic and transparent interpretation. The analysis ultimately produces a structured narrative that identifies strengths, gaps, and practical implications for the drafting, monitoring, and enforcement of digital agreements in Indonesian business practice.

RESULT AND DISCUSSION

Legal Certainty of Digital Agreements within the Framework of Electronic Transaction Regulation

The development of information technology has significantly changed the way people conduct business transactions, particularly with the advent of digital agreements in modern commerce. In practice, businesses often include exoneration clauses in electronic contracts and terms and conditions on online platforms as the basis for their legal relationships with consumers (Pitaloka & Sudharma, 2025). The existence of these clauses often raises legal issues, particularly regarding the extent to which businesses can limit their liability and whether such clauses are truly valid and provide legal certainty for the parties.

The development of contract law in the digital context also demonstrates that the Indonesian legal system is striving to adapt to changes in increasingly technology-based economic activities, including in regulating standard clauses and exemption clauses. The Electronic Information and Transactions (ITE) Law and Government Regulation No. 71 of 2019 explain that electronic agreements have the same legal force as conventional agreements as long as they meet the requirements for a valid agreement. However, the use of exemption clauses must be cautious and must adhere to the principles of fairness, good faith, and not conflict with applicable laws (Filmadina et al., 2025).

Legal certainty in the application of exoneration clauses in digital transactions is actually built from a combination of several complementary rules. The Civil Code is the general basis

that regulates freedom of contract, while the ITE Law and the Consumer Protection Law provide limitations so that existing clauses do not harm consumers. From the combination of these regulations, the aim is that exoneration clauses are not used arbitrarily by business actors in online transactions.

Based on the analysis of the provisions of Article 1320 of the Civil Code, Article 18 of Law Number 8 of 1999 concerning Consumer Protection, and Law Number 1 of 2024 concerning Electronic Information and Transactions, it was found that exoneration clauses in digital agreements cannot be enforced absolutely. Although the principle of freedom of contract provides room for parties to determine the content of the agreement, there are legal limitations that must be complied with. Clauses that exempt business actors from all responsibility for consumer losses have the potential to conflict with the principle of consumer protection and can be declared null and void. This finding indicates that legal certainty in digital transactions depends not only on the existence of electronic agreements, but also on the compliance of the agreement's contents with the provisions of applicable laws and regulations.

The concept of legal certainty in this study refers to Gustav Radbruch's view that the law must provide clarity of norms, consistency of application, and guarantee protection of the rights of legal subjects. In the context of digital transactions, legal certainty is reflected through the legal recognition of electronic documents, electronic signatures, and electronic evidence mechanisms. Thus, legal certainty relates not only to the validity of digital agreements but also encompasses protection for the parties in the event of a dispute.

Legally, the application of an exoneration clause in a digital agreement can only be considered valid if the agreement meets the requirements for a valid agreement as stipulated in Article 1320 of the Civil Code (Chang et al., 2024). Although in contract law, the parties are given the freedom to determine the contents of the contract, this freedom is not completely free, because it is still limited by mandatory legal regulations, especially those aimed at protecting the weaker party, namely consumers (Zulfikar & Meiliawati, 2025).

According to Article 1320 of the Civil Code, agreements in digital contracts should arise from the free will of the parties. However, in reality, especially regarding exoneration clauses, they often become problematic because agreement is simply "clicked" without the consumer fully understanding the terms. This raises doubts about the validity of the agreement, especially if the clause disproportionately limits or eliminates the business actor's responsibilities (Arvisya & Putra, 2025).

On the other hand, the ITE Law does recognize electronic documents and electronic signatures as valid evidence. However, this does not automatically mean that all contents of an electronic agreement are true or valid, especially if there are clauses that conflict with legal regulations. Therefore, even if a clause exempts a business from liability for consumer losses, it can still be deemed null and void if it violates consumer protection regulations (Wijaya et al., 2023).

In practice, exoneration clauses are typically included in standard contracts unilaterally drafted by businesses. Consumers are simply given the option of agreeing or disagreeing, without the ability to negotiate the terms of the agreement. This clearly demonstrates the consumer's weak position and can lead to the unfair application of exoneration clauses, even if they are formally considered valid due to electronic agreement (Anbiya et al., 2025).

Consumer Protection in Digital Agreements

Electronic contracts, as a legal instrument in digital transactions, are typically characterized by standard contracts containing numerous exoneration clauses. Therefore, it is important to examine the application of these clauses to prevent businesses from misusing their freedom of contract to unilaterally avoid liability. Indonesian positive law recognizes electronic contracts, but there are still limitations on clauses that could reduce or eliminate consumer rights (Jamba et al., 2025).

The main problem with implementing exoneration clauses lies in the imbalance between businesses and consumers. Consumers are often in a weaker position due to a lack of information and the lack of opportunity to negotiate. Clauses created unilaterally by businesses can create an imbalance of rights and obligations, thus contradicting the principle of fairness in contracts (Widyawati et al., 2025).

To provide legal protection, consumer protection regulations prohibit standard clauses that shift business responsibilities to consumers. The principles of transparency, fairness, and good faith are the primary basis for assessing the validity of exoneration clauses in digital agreements. Furthermore, the existence of electronic dispute resolution mechanisms also provides consumers with the opportunity to assert their rights if they feel disadvantaged by the application of such clauses (Prasja & Kurniasih, 2025).

Consumer protection in terms of exoneration clauses is also closely linked to personal data protection. A clause that exempts electronic system providers from liability for data breaches actually contradicts existing regulations, such as those stipulated in the Minister of Communication and Information Technology Regulation. Consumers still have the right to file a complaint if they are harmed due to the provider's negligence in safeguarding their personal data (Nur et al., 2024).

From a law enforcement perspective, businesses or electronic system providers who continue to use unlawful exoneration clauses can face administrative sanctions. This demonstrates the government's intervention to limit contract practices that harm consumers, including the use of clauses that violate regulations (Carundeng, 2022).

Furthermore, the concept of a Cyber Notary plays a crucial role in monitoring and minimizing the use of detrimental exoneration clauses. Through electronic recording and authentication by a notary, the contents of digital agreements can be reviewed more objectively, ensuring they are legal and still protect consumers (Abdillah & Saputra, 2025).

So, in essence, exoneration clauses in digital business transactions are permissible, but they cannot be used arbitrarily. They must comply with applicable laws, particularly those related to consumer protection, and cannot be used to unilaterally avoid business responsibilities. Legal certainty can only be achieved if there is a balance between freedom of contract and consumer protection in digital transactions.

Based on the research findings, the use of exoneration clauses in digital transactions must be understood through several key legal concepts, namely the principle of freedom of contract, the principle of good faith, the principle of balance, and the principle of consumer protection. The principle of freedom of contract does grant the parties the right to determine the content of the agreement, but this freedom is not absolute because it is limited by mandatory legal provisions.

Research findings indicate that exoneration clauses are frequently used in standard electronic contracts, which do not provide room for negotiation for consumers. This situation creates an imbalance in the positions of the parties, potentially violating the principle of balance in contract law. Furthermore, clauses that exempt business actors from responsibility for consumer losses also conflict with the principle of good faith as stipulated in Article 1338 paragraph (3) of the Civil Code.

From a consumer protection perspective, the existence of Article 18 of the Consumer Protection Law demonstrates that the state limits the use of standard clauses that are detrimental to consumers. Therefore, conceptually, exoneration clauses are only justifiable if they do not eliminate fundamental consumer rights and still ensure a balance between the rights and obligations of all parties in digital transactions.

CONCLUSION

Based on the findings of existing research, it can be concluded that the application of exoneration clauses in digital agreements is permissible as a form of freedom of contract, but is not without limits and must comply with applicable legal regulations. Exoneration clauses included in electronic contracts must fulfill the legal requirements of an agreement and must not conflict with the principles of justice, good faith, and consumer protection as set forth in the Civil Code, the ITE Law, and the Consumer Protection Law. In digital transaction practices, which predominantly use standard contracts, exoneration clauses often create an imbalance between business actors and consumers. This may be detrimental to consumers, particularly when such clauses are used to transfer or eliminate the responsibility of business actors unilaterally. Therefore, legal certainty and legal protection in the digital era can only be achieved if the application of exoneration clauses is carried out in a balanced, transparent, and well-monitored manner through clear regulations and consistent law enforcement, so that the rights and obligations of all parties are upheld in digital business transactions.

Furthermore, the use of exoneration clauses must adhere to the principles of consumer protection and contractual balance to ensure that consumer rights are safeguarded in electronic transactions. Business actors should draft digital agreements in clear and easily understandable language and avoid clauses that are detrimental to consumers. In addition, the government needs to strengthen oversight of the use of standard clauses in digital transactions in order to establish legal certainty and optimize legal protection for the public.

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